In the High Court of Punjab and Haryana at Chandigarh

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(1) C.W.P. Nos.16533 of 2005

.....

Date of decision:24.1.2007

Jasbir Kaur

.....Petitioner

v.

Punjab State Electricity Board and others

.....Respondents

....

(2) C.W.P. Nos.16629 of 2005

.....

Jasbir Kaur

.....Petitioner

v.

Punjab State Electricity Board and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. T.P. Singh, Advocate for the petitioner.

Mr. Parminder Singh, Advocate for the respondents.

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This order will dispose of C.W.P. Nos.16533 and 16629 of 2005

as they are between the same parties and involve similar facts.

Jasbir Kaur, who is the petitioner, in both the writ petitions joined the Punjab State Electricity Board ('Board' – for short) (respondent No.1) as Internal Auditor on 13.1.1989. She was promoted as Revenue Accountant on 2.9.1996. Since then she is posted as such in the City Sub Division at Tanda. During her service she was issued two separate charge-sheets. The first charge-sheet was issued on 2.4.2002 in which four charges were attributed to her. The same is subject matter of CWP No.16533 of 2005. The second charge-sheet was issued on 1.8.2002 in which six charges were attributed to her. The same is subject matter of CWP No.16629 of 2005.

Two separate inquiries were held in respect of both the charge-sheets. The Inquiry Officer in respect of the first charge-sheet exonerated the petitioner of all the charges vide his report. However, the Chief Accounts Officer (respondent No.3) of the Board who is the disciplinary authority vide memo dated 5.12.2003 sought the comments of the petitioner. Since she had been exonerated of the charges, the petitioner did not feel the necessity of filing any reply. Thereafter, the disciplinary authority vide order dated 24.2.2004 found the petitioner guilty of the charges mentioned in the charge-sheet and accordingly imposed the punishment of forfeiture of one increment without cumulative effect. Against the order dated 24.2.2004 imposing the punishment of forfeiture of one annual increment without cumulative effect, the petitioner filed a statutory appeal before the Member/ Finance & Accounts (respondent No.2) of the Board who is the appellate authority which was rejected on 28.12.2004. The petitioner by way of

C.W.P. No.16533 of 2005 seeks quashing of the office order dated 24.2.2004 passed by the disciplinary authority (respondent No.3) and the order dated 28.12.2004 passed by the appellate authority (respondent No.2).

As regards the second charge-sheet, the Inquiry Officer in his report exonerated the petitioner with respect to charges 4, 5 and 6. Insofar as charges 1 to 3 are concerned, the petitioner was held partly responsible along with others. However, it was held that no mala fide intention of the petitioner was involved. The Chief Accounts Officer (respondent No.3) being the disciplinary authority vide memo dated 23.10.2003 while sending the inquiry report to the petitioner requested that if she wanted to submit anything in connection with the said report, the representation be submitted in writing. The petitioner in order to controvert the findings of the Inquiry Officer as regards charges No.1 to 3 filed her detailed comments. However, the disciplinary authority (respondent No.3) vide order dated 11.2.2004 imposed penalty of forfeiture of one annual increment. It is submitted that the impugned order imposing the penalty of forfeiture of one annual increment would show that the petitioner has been held guilty of all the charges without the disciplinary authority recording his dissent on each of the charges including those in which the petitioner had been exonerated by the Inquiry Officer and that too without seeking comments of the petitioner. In any case, against the said order, the petitioner filed an appeal before the appellate authority i.e. Member/Finance & Accounts (respondent No.2) of the Board which has been dismissed vide order dated 28.12.2004. The petitioner by way of CWP No.16629 of 2005 seeks quashing of the order dated 11.2.2004 passed by the disciplinary authority (respondent No.3) and

order dated 28.12.2004 passed by the appellate authority (respondent No.2).

The respondent-Board has filed reply in both the writ petitions in which it is stated that the petitioner has been awarded minor punishment in terms of Regulation 5(iv) of the Punjab State Electricity Board Employees (Punishment & Appeal) Regulations, 1976 (`Regulations' – for short). In respect of the first charge-sheet it is stated that though the petitioner was exonerated of charges No.1 to 3, however, with respect to charge No.4 the petitioner was found negligent and responsible for the loss of revenue to the Board due to fixation of incorrect due dates while issuing large supply bills. The petitioner was held guilty along with other officials of the Sub Division. The Chief Accounts Officer (respondent No.3), who is the punishing authority, found the petitioner guilty in respect of charge No.4. Therefore, she was not fully exonerated and awarded minor punishment which has been affirmed by the appellate authority.

With respect to the second charge-sheet, it is submitted that though the petitioner was exonerated of the charges No. 4 to 6, however, for charges No.1 to 3 she was found responsible for being negligent and not putting the charges/ allowances in the sundry register according to the instructions as contained in Chapter-16 of the Sale of Power of the Board. The petitioner has straightway recorded the ledger. It is submitted that to recover the defaulting amount of any consumer by diverting it in the bills of of other consumers without any reason was against the instructions and was unjustified. The petitioner along with others was found responsible of the charge that there was a short assessment of an amount of Rs.24,48,109/- as she had not checked the bills at the spot and violated the instructions

contained in Chapter-22 of the Sale of power. Accordingly, the Chief Accounts Officer (respondent No.3) who is the punishing authority found the petitioner guilty in respect of charges No.1 to 3. Therefore, she was awarded minor punishment of forfeiture of one annual increment without cumulative effect, the appeal against which has also been dismissed.

We have heard learned counsel for the parties and perused the record. The petitioner has been imposed two punishments in two separate inquiries that were conducted against her. In both the cases she had been imposed the stoppage of one annual increment without cumulative effect. The same admittedly is a minor punishment. The contention of the learned counsel for the petitioner that the petitioner had been exonerated of all the four charges in the first inquiry and, therefore, the disciplinary authority without recording his note of dissent could not have imposed the minor punishment, in the circumstances of the case was liable to be considered by the appellate authority. The disciplinary authority has after perusal of the inquiry report found the petitioner responsible with respect to charge No.4 inasmuch as she was negligent for the loss of revenue to the Board due to fixation of incorrect due dates while issuing large supply bills. The same was the basis for the imposition of the minor punishment as regards the first charge-sheet. Insofar as the second charge-sheet is concerned, the petitioner admittedly has been found liable by the Inquiry Officer insofar as charges No.1 to 3 are concerned. However, she was exonerated of charges No.4, 5 and 6 by the Inquiry Officer. In any case, for the charges 1 to 3 for which she was held partly responsible along with others, it was held that there was no mala fide intention involved on the part of the petitioner. The petitioner

filed her reply to the report of the Inquiry Officer regarding charges 1 to 3 for which she was held liable. The contention of the learned counsel is that even in respect of the charges that the petitioner was exonerated she has been held liable by the Inquiry Officer. The imposition of minor penalty of stoppage of one increment without cumulative effect by the disciplinary authority in the second inquiry with respect to the proved charges of the second charge-sheet cannot, therefore, at this stage be said to be without basis. This aspect, in fact, was also liable to be considered by the appellate authority (respondent No.3).

A perusal of the orders passed by the appellate authority on 28.12.2004 in both the cases would show that the appellate authority has merely recorded the history of the case and thereafter recorded that on consideration of the appeal in the light of the comments of the field staff and the record available in the office and the other facts, her appeal is ordered to be rejected. The said orders in both the cases, in our opinion, cannot be sustained as they suffer from the vice of non-application of mind. The appellate authority in respect of the first charge-sheet has only recorded as follows:-

> "4. Whereas the Member/Finance and Accounts being the competent authority, on consideration of the appeal of Smt. Jasbir Kaur, Revenue Accountant in the light of the comments of the field staff and the record available in the office and the other facts, ordered for rejection of her appeal.
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> 5. Thus the appeal filed by Smt. Jasbir Kaur, Revenue Accountant against the office order No.288 dated 24.2.2004

> passed by the Chief Accounts Officer, P.S.E.B. Patiala forfeiting her one annual increment without future effect, is hereby rejected and the punishment given to her is being upheld."

As regards the second charge-sheet except for changing of the office order No. from 288 to 221 and the date from 24.2.2004 to 11.2.2004 the order has been recorded in the same terms. Learned counsel for the respondent-Board has produced the files regarding consideration of the case of the petitioner by the appellate authority. The appeals filed by the petitioner were submitted before the Member/Finance & Accounts, P.S.E.B. (respondent No.2) and the noting recorded in respect of the first charge-sheet by the appellate authority is as under:-

> "Even the inquiry report does not have any documentary evidence to prove the point. I agree with the remarks of CAO. Appeal stands rejected."

In the second charge-sheet the noting recorded by the appellate authority is as under:-

> "Inquiry report has been prepared in a very casual manner without going into the details. There is no investigative aspect in it. I agree with the comments of CAO at `A' above. Appeal stands rejected."

A perusal of the above shows that the orders in appeals have been passed without recording any reasons for rejecting the same. The recording of reasons in support of a decision is now an accepted facet of the principles of natural justice. A party has a right to know not only the decision but also

the reasons and basis of the decision which satisfies an employee as to how and in what manner his case has been considered and dealt with. The contention of the learned counsel for the petitioner as regards the first charge-sheet that the petitioner has been exonerated of all the four charges and yet has been imposed the penalty was liable to be considered by the appellate authority with due application of mind and after recording reasons in support of its decision. In the second charge-sheet also it was found that the petitioner is liable in respect of charges 1 to 3. However, it was also found that no mala fide intent of the petitioner was involved. These circumstances were liable to be considered by the appellate authority in accordance with law. In the circumstances, we are of the view that the orders passed by the appellate authority in both the cases are liable to be invalidated being bereft of reasons and without due application of mind.

In view of the above, the petitions are allowed. Orders passed by the Member/Finance & Accounts, PSEB (respondent No.2) are hereby quashed and set aside. The matter is remanded back to the Appellate Authority for reconsideration of the matter and to pass a speaking order after giving an opportunity of hearing to the petitioner. Let the speaking orders be passed within a period of two months from receipt of the copy of the orders. We make it clear that in case the appeals of the petitioner are again rejected, the petitioner shall be at liberty to challenge the inquiry proceedings, inquiry reports, orders passed by the Punishing Authority and the orders passed by the Appellate Authority on the same grounds or any other additional grounds that may be available to her. Nothing stated herein shall be taken as an expression on the merits of the orders as passed by the

disciplinary authority and the appellate authority shall consider the case on the basis of record and the contentions as raised by the petitioner.

**(S.S. Nijjar)**
**Judge**

January 24, 2007. **(S.S. Saron)**
**Judge**

*hsp*

**NOTE**: Whether to be referred to the Reporter or not:Yes/No